

ORDINANCE NO. 19424-11-2010

AN ORDINANCE AMENDING SECTION 6-61, "UNLAWFUL ACTS ENUMERATED," OF CHAPTER SIX OF THE CODE OF THE CITY OF FORT WORTH TO PROHIBIT SALE OR POSSESSION OF INSTRUMENTS FOR PURPOSES OF BIRDFIGHTING; AMENDING DIVISION THREE OF ARTICLE TWO OF APPENDIX B, "DEPARTMENT OF CODE COMPLIANCE," OF THE CODE OF THE CITY OF FORT WORTH TO REPEAL SUPERSEDED PROVISION RELATING TO THE KEEPING OF LARGE ANIMALS, TO LIMIT KEEPING OF ROOSTERS IN THE CITY, AND TO CLARIFY REGULATION OF PREVIOUSLY ISSUED CONTINUANCE PERMITS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Fort Worth is committed to ensuring public health, welfare, and safety; and

WHEREAS, the keeping of roosters in non-agricultural settings creates potential issues related to noise nuisances and animal aggression; and

WHEREAS, general keeping of roosters is not necessary for egg production; and

WHEREAS, limited keeping of roosters is necessary for chicken breeding; and

WHEREAS, rooster fighting is illegal in all fifty states; and

WHEREAS, federal law prohibits knowingly selling, buying, possessing, training, transporting, delivering, or receiving any animal for purposes of having the animal participate in an animal fighting venture; and

WHEREAS, regulations previously found in Section 11A-21 relating to the keeping of large animals have been superseded by revisions to the City's zoning regulations; and

WHEREAS, staff proposed changes to Division Three of Article II of Appendix B, "Department of Code Compliance," of the Code of the City of Fort Worth to restrict the ownership of roosters within City limits and clarify the regulation of previously issued continuance permits; and

WHEREAS, a series of meetings was held to receive public input regarding proposed ordinance changes; and

WHEREAS, after taking into account public feedback and professional practices, staff has revised its recommendations; and

WHEREAS, the Fort Worth City Council finds it advisable to adopt staff's recommendations as revised.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

SECTION 1.

That Section 6-61, "Unlawful acts enumerated," of the Code of the City of Fort Worth, Texas, is hereby amended to add a new subsection (k) prohibiting manufacture, possession, or sale of birdfighting paraphernalia and to renumber the remaining subsections accordingly. Section 6-61 shall read in pertinent part as follows:

. . . .

(k) It shall be unlawful for a person to knowingly manufacture, buy, sell, barter, exchange, possess, advertise, or otherwise offer equipment used for training or handling a fighting bird, including, but not limited to, a cage, decoy, pen, house for keeping a fighting bird, feeding apparatus, training pen, or a gaff, slasher, or other sharp implement designed for attachment to a fowl with the intent that the equipment be used in birdfighting. For purposes of this provision, "gaff" means

an artificial steel spur designed to attach to the leg of a fowl to replace or supplement the fowl's natural spur, and "slasher" means a steel weapon resembling a curved knife blade designed to attach to the foot of a fowl. For purposes of this provision, it is presumed that equipment is intended to be used for birdfighting if the decoy or gaff, slasher, or other implement (i) bears blood or other biological matter or residue; or (ii) if a police officer, animal care and control officer, code enforcement officer, or other person charged with enforcing this ordinance witnesses the decoy or implement (a) attached to a bird or (b) in the pen, coop, or yard in which the bird is located.

(l) The actions prohibited by this section are in addition to any prohibitions existing elsewhere in this code or any applicable state or federal law. Nothing in this section shall be construed to limit any duty imposed on an owner by any other provision of this Code or any applicable state or federal law.

(m) (1) Public safety officers, including officers in the city code compliance, public health, fire, and police departments, shall have the authority to seize any animal that is the subject of any violation of this section if doing so is believed to be necessary to protect the animal's health, safety, or welfare.

(2) If an officer personally witnesses a violation of any provision of this section occurring in plain view from or on public property, the officer may seize the animal without seeking issuance of a warrant even if doing so requires entering onto or into private property.

(3) If an animal is seized without a warrant under subsection (m)(2), a timely post-seizure hearing shall be held to satisfy the constitutional requirements of due process.

(n) Nothing in this section shall be construed to prevent public safety officers, including officers in the city code compliance, public health, fire, and police departments from euthanizing animals when authorized to do so by any statute, ordinance, or law, or when such action is deemed necessary to spare the animal unreasonable pain and suffering or in the interest of the public health and safety.

All portions of Section 6-61, "Unlawful acts enumerated," not specifically amended shall remain in effect.

SECTION 2.

That Section 11A-21, "Keeping of cattle, horses, sheep, goats, emus, ostriches, and rheas," of Appendix B of the Code of the City of Fort Worth, Texas, is hereby repealed and deleted in its entirety.

SECTION 3.

That Section 11A-22a, "Keeping of rabbits, guinea pigs, pigeons, and fowl," of Appendix B of the Code of the City of Fort Worth, Texas, is hereby renamed and renumbered and amended to revise the definition of fowl, to limit the number of roosters that may be kept, to provide a definition of "regulated structure," to remove all references to continuance permits, and to renumber the remaining subsections accordingly. The amended section shall read as follows:

Sec. 11A-22. Keeping of rabbits, guinea pigs, pigeons, and certain fowl.

(a) In this section, "regulated animal" means any rabbit, guinea pig, or pigeon and any "fowl" as defined by this section. For purposes of this section, the term "fowl" shall include any bird used for food or sport or kept as a pet but shall not include pigeons, emus, ostriches, or rheas. For the purposes of this section "rooster" shall mean a male chicken (species *Gallus domesticus*).

(b) A person commits an offense if the person knowingly keeps or maintains any number of rabbits, guinea pigs, pigeons and/or fowl within fifty (50) feet of any regulated structures as defined in section (f).

(c) A person commits an offense if, on one (1) acre or more of property, the person knowingly

(1) keeps or maintains more than fifty (50) fowl;

(2) keeps or maintains more than two (2) roosters on property that is zoned as residential or mixed-use commercial in accordance with Appendix A of the Code of the City of Fort Worth, regardless of the total number of fowl being kept; or

(3) keeps or maintains any number of fowl not contained within a coop or pen.

For purposes of this section a pen or coop shall include any fully enclosed structure specifically designed and constructed to constrain animals or birds within its confines.

(d) A person commits an offense if, on one-half (½) acre or less, the person knowingly

(1) keeps or maintains more than twelve (12) fowl;

(2) keeps or maintains more than two (2) roosters on property that is zoned as residential or mixed-use commercial in accordance with

Appendix A of the Code of the City of Fort Worth, regardless of the total number of fowl being kept; or

(3) keeps or maintains any number of fowl not contained within a coop or pen.

(e) A person commits an offense if, on more than one-half (½) acre but less than one acre, the person knowingly

(1) keeps or maintains more than twenty-five (25) fowl;

(2) keeps or maintains more than two (2) roosters on property that is zoned as residential or mixed-use commercial in accordance with Appendix A of the Code of the City of Fort Worth, regardless of the total number of fowl being kept; or

(3) keeps or maintains any number of fowl not contained within a pen or coop.

(f) For purposes of this section, a “regulated structure” shall be:

(1) Any residence, structure, or building used for human habitation, other than the person’s habitation;

(2) Restaurant, cafe, or eating establishment;

(3) Church, school, hospital, convalescent home, nursing home, or residential treatment facility;

(4) Daycare facility, facility offering medical or dental services, hotel, motel, or other lodging facility.

(g) If a regulated animal is kept in or confined by any building or structure, such as a stable, barn, shed, pen, or fence, the distances required by subsection (b) shall be measured in a straight line from the nearest point of such building or structure to the nearest point of the closest regulated structure.

(h) A person keeping or maintaining any regulated animals commits an offense if the person fails to:

(1) Collect the animals’ wastes daily in a rat-proof and fly-tight container or receptacle;

(2) Store wastes collected pursuant to subsection (h)(1) in a closed fly-proof and rat-proof container, and in a manner that prevents the escape of odors from the container; and

(3) Dispose of wastes collected pursuant to subsection (h)(1) at least once each week in a manner that prevents the breeding of flies.

(i) These provisions shall not apply to:

(1) Any facility related to public safety;

(2) Legally operating agricultural activities;

(3) Legally operating commercial enterprises where the keeping or maintaining of regulated animals is in compliance as a use by right.

(j) It is an affirmative defense to prosecution under this section that the animal in question is

(1) subject of a valid continuance permit issued pursuant to Ordinance 14115;

(2) being kept at City-owned or operated property for exhibition for a period not exceeding twenty-one (21) days in connection with an agricultural exposition or fair; or

(3) being kept for sale, for a period not exceeding fourteen (14) days, within the boundaries of the Fort Worth Stockyards located at 131 East Exchange Street.

SECTION 4.

That Appendix B of the Code of the City of Fort Worth, Texas, is hereby amended to add a new Section 11A-22.2 to address continuance permits issued pursuant to Ordinance 14115:

Sec. 11A-22.2. Continuance Permits.

(a) Continuance permits issued pursuant to City Ordinance 14115 allowing the maintenance of conditions that would otherwise constitute a violation of former section 11A-21 or section 11A-22 shall continue in effect unless suspended or revoked pursuant to this section.

(b) A continuance permit is valid only for the original permittee and for those conditions designated and approved. A continuance permit is not transferable to any other person or any other location.

(c) The permit shall be automatically revoked upon a change in the status of the permitted property or upon cessation of the uses as stated in the permit for a period of thirty (30) days.

(d) The code compliance director, or that individual's designee, may suspend or revoke the continuance permit if the subject of the permit is found to be in violation of City code or state or federal law.

(e) This process shall exhaust all administrative remedies of the permittee.

SECTION 5.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 6.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 7.

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this

ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 8.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 9.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

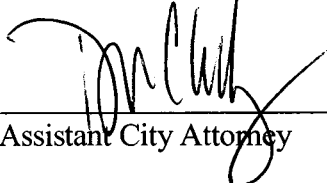
SECTION 10.

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 11.

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:



Assistant City Attorney

ADOPTED: November 9, 2010

EFFECTIVE: November 18, 2010

City of Fort Worth, Texas
Mayor and Council Communication

COUNCIL ACTION: Approved on 11/9/2010 - Ord. No. 19424-11-2010

DATE: Tuesday, November 09, 2010

REFERENCE NO.: G-17110

LOG NAME: 23ORDINANCE LIMITING ROOSTER OWNERSHIP

SUBJECT:

Adopt an Ordinance Limiting Rooster Ownership on Property Zoned Residential or Mixed-Use, Banning Possession of Paraphernalia for Birdfighting, Repealing Large Animal Ordinance Superseded by Previous Changes to Zoning Ordinance and Defining Term Regulated Structure

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending the City Code to (i) impose a limit of two roosters for each piece of property zoned residential or mixed-use commercial, (ii) prohibit ownership of birdfighting paraphernalia with the intent to use for birdfighting; (iii) repeal the large-animal ordinance that was superseded by a previous zoning ordinance, and (iv) define the term "regulated structure."

DISCUSSION:

The Code Compliance Department has experienced an increase in the number of citizen complaints related to suspected cockfighting activities, resulting in increased investigations and discovery of evidence of cockfighting. Additionally, there has been an increase in the number and frequency of noise nuisance complaints received from residents and neighborhood organizations specific to roosters. Current state laws and City ordinance provisions are not effective in resolving these complaints by Code Compliance and other enforcement agencies.

There is a growing trend among Texas cities to regulate roosters. For example, Dallas and Grand Prairie prohibit roosters on any premises within their city limits, and Arlington has banned roosters from all properties except those zoned agricultural. Twenty-three other Texas cities have passed similar regulations specific to roosters. Since the City's current ordinance was passed in the year 2000, cockfighting has been made illegal in all fifty states.

The Code Compliance Department facilitated four public meetings to discuss potential rooster regulations in Fort Worth. At each meeting, public comments were obtained from both sides of this issue. Many rooster owners promoted the legitimate breeding activities that would be harmed if roosters were banned outright, while many neighborhood representatives spoke of noise, cockfighting and other concerns. Following the receipt and consideration of all input, the Code Compliance Department is recommending what it considers to be a compromise position that will limit but continue to allow rooster ownership in residential areas of the city without affecting other zoning districts.

Current ordinance provisions include the following:

- An owner is allowed to own the following total number of fowl with no distinction made with respect to the gender of the birds
 - ½ acre or less – 12 fowl

- ½ acre to 1 acre – 25 fowl
- 1 acre or more – 50 fowl
- All fowl must be contained in a coop or pen at all times.
- Coops and pens must be 50 feet from any regulated structure.
- Owners must clean up waste so as to not create a nuisance.
- Owners who requested and were granted continuance permits within four months of the adoption of the ordinance in 2000 are allowed to exceed the number limits, with such permits remaining valid only for the original owner and only for the conditions originally approved.
- To file a noise nuisance complaint, a complainant must submit an affidavit and testify in court.

Staff is recommending the following ordinance changes:

- The same limits will apply on the total number of fowl, but on property that is zoned residential or mixed-use no more than two of those fowl can be roosters.
- It shall be unlawful for a person to knowingly manufacture, buy, sell, barter, exchange, possess, advertise or otherwise offer birdfighting paraphernalia with the intent that the items be used in birdfighting. If an item is found with blood or tissue on it, attached to a bird, or in the bird's coop or pen, it is presumed that the implement is intended to be used for birdfighting
- All continuance permits from 2000 will be honored; however, revocation criteria will be clarified to include violations of city, state, or federal law.

The noise issues will be addressed as part of the noise ordinance review process currently underway and which will be presented to the City Council at a later date.

It is recommended that the ordinance go into effect upon approval. The Code Compliance Department intends to observe a six-month grace period before beginning active enforcement of the new ordinance to allow current owners to attain full compliance.

FISCAL INFORMATION / CERTIFICATION:

The Financial Management Services Director certifies that this action will have no material effect on City funds.

FUND CENTERS:

TO Fund/Account/Centers

FROM Fund/Account/Centers

CERTIFICATIONS:

Submitted for City Manager's Office by:

Charles Daniels (6199)

Originating Department Head:

Brandon Bennett (6322)

Additional Information Contact:

Brandon Bennett (6322)